LAW OF CONTRACT I GROUP ASSIGNMENT
(Group 10)

GROUP WORK

BY

1. Bamigbade Emmanuel Oluwaferanmi, 242861
2. Arogbonlo Funmilayo Jolyn, 242856
3. Benjamin Promise Onyinye, 242864
4. Iyamabo Natasha Ehromosele, 242891
5. Gafaar Zainab Bisola, 242882
6. Adagbonyin Oluwatofunmi Martha, 242822
7. ILAWOLE, Abiola Oluwademilade, 242889.
8. Okechukwu Famous, 242921
9. Akingboye Oyindamola Deborah, 242847
10. Akinlolu Adeola Abigail, 242848

Department: LAW/ LEGAL STUDIES
Faculty: LAW

Course Title: Law of Contract 1
Course Code: LCI 201

July, 2025.

QUESTION:

By its very nature, there is no limit to the number of people an offer can be made to. But a contract comes into existence only between the offeror and the person(s) responding positively to the offer by way of acceptance.
Per Bowen, L.J., in Carlill v Carbolic Smoke Ball co.

In line with the above assertion, compare and contrast offer and invitation to treat.

INTRODUCTION

The formation of a contract is not always as simple or clear-cut as it appears. There are instances where one party claims that a contract has been formed, only for it to be revealed that no legally binding agreement actually exists. A significant factor contributing to contractual disputes that end up in court is the general public's lack of understanding regarding the crucial difference between an offer and an invitation to treat. Without this clarity, parties may mistakenly believe a binding agreement exists when, legally, it does not. A classic illustration of this can be found in the landmark case of ***Carlill v Carbolic Smoke Ball Co. (1893)***, where ***Bowen LJ*** made a statement that has echoed through the halls of contract law for over a century.

“There is no limit to the number of people to whom an offer may be made. But a contract only comes into existence between the person making the offer and the person who accepts it.”

This deceptively simple statement captures the core of contract formation. The moment when law begins to hold two parties accountable to their words. Yet, before a contract can arise, there must first be an offer, clear, definite, and intended to be binding. And herein lies one of the most challenging puzzles of contract law: how does one differentiate a genuine offer from an invitation to treat?

The answer to this question is not always obvious. The world of commerce is filled with promotional messages, advertisements, circulars, shop displays, and catalogues. A seller may advertise a product for sale, but is that advertisement a legal offer that can bind them upon acceptance? Or is it merely an invitation to negotiate or a call to customers to make an offer themselves?

The distinction between an offer and an invitation to treat is foundational to determining when a contract has been validly formed. ***It governs who is legally bound, and when.*** This seemingly technical line can carry weighty real-life consequences. For instance, a retailer's advertisement might entice thousands, but without the intention to be legally bound, it remains a non-binding invitation. Yet, if phrased too definitively, the same ad could trigger a deluge of enforceable claims, like in the case of ***Carlill v Carbolic Smoke Ball Co.***

This essay will explore, with the aid of judicial authority and case law, the precise meaning and requirements of a valid offer, juxtaposed with the nature of an invitation to treat, extensively delineating the distinction between the concepts. Using cases such as ***Carlill v Carbolic Smoke Ball Co.***, ***Lefkowitz v. Great Minneapolis Surplus Store, Inc***, ***Partridge v Crittenden***, and ***Fisher v Bell***, it will dissect how courts draw the line and why that line must be drawn. It will also examine the commercial logic and public policy underlying the distinction, and discuss the legal consequences when that line becomes blurred.

Ultimately, understanding this distinction is not only essential for mastering the law of contract but also for appreciating how the law mediates the balance between freedom of commerce and legal certainty in a marketplace driven by expression, persuasion, and negotiation.

DEFINITION OF OFFER IN CONTRACT LAW

An offer in contract law is a clear expression of willingness by one party (the offeror) to be bound by specific terms, made with the intention that it shall become binding as soon as it is accepted by the other party (the offeree). The offer must be communicated clearly and must contain definite terms capable of forming a contract once accepted.

According to ***Treitel on the Law of Contract,*** an offer is "***an expression of willingness to contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed. This distinguishes an offer from a mere invitation to treat, which only invites others to make offers.***"

The leading case of ***Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256*** illustrates the principles underpinning an offer. In this case, the defendants advertised that they would pay £100 to anyone who contracted influenza after using their smoke ball product as instructed. The plaintiff, Mrs. Carlill, used the product and still caught influenza. The company argued that the advertisement was not a binding offer, but the court held otherwise. The court found that the advertisement constituted a unilateral offer to the world at large, and that Mrs. Carlill had accepted the offer by performing the conditions specified. This case demonstrates that an offer can be made to the general public and that performance of the specified act constitutes acceptance.

Another illustrative case is ***Lefkowitz v. Great Minneapolis Surplus Store (1957) 86 NW 2d 689***, a decision from the United States. The store advertised a sale of fur coats for $1 each to the first customers in line. Mr. Lefkowitz arrived early and offered to buy the coat, but the store refused to sell to him, arguing that the ad was "just an invitation to treat." The court ruled that the advertisement was a clear, definite, and explicit offer, leaving nothing open for negotiation. Because Lefkowitz complied with the terms by being first in line, his acceptance created a binding contract. This case reinforces the idea that when an advertisement contains clear and definite terms and shows an intention to be bound, it can amount to a valid offer.

In sum, for a statement to amount to an offer in contract law, it must:

1) Be clear, definite, and complete in its terms;
2) Be communicated to the offeree;
3) Show an intention to be bound upon acceptance;

These requirements ensure clarity and certainty in the formation of legally binding agreements

INVITATION TO TREAT

An invitation to treat is a statement or action indicating readiness to negotiate but not a legal offer. It is not an offer; it is inviting others to make one, which can be accepted or rejected. As Prof. Ewan McKendrick puts it in Contract Law: Text, Cases, and Materials, an invitation to treat is a "pre-offer communication" with no intention of being bound upon acceptance.

Legally speaking, while an offer indicates a willingness to be bound lawfully upon acceptance, an invitation to treat does not. This distinction ensures that parties are not inadvertently binding themselves into obligations before negotiations have been finalized.

DIFFERENCE BETWEEN INVITATION TO TREAT AND OFFER

The main difference between an offer and an invitation to treat is **legal effect** and **intent**. An offer is a promise made with the intention of being bound by an acceptance, but an invitation to treat expresses merely a willingness to accept offers or to negotiate, but not to enter immediately into a contract.

Offers, if accepted, result in a binding contract. Invitations to treat, however, cannot be accepted in order to form a contract, as they do not constitute an irrevocable promise. ***In Treitel (Law of Contract, 14th ed.)***, "***An offer is a definite promise to be bound provided certain specified terms are accepted. An invitation to treat is a preliminary step in negotiations***."
This is necessary to prevent putting firms or parties into contract by words of interest never intended to be an offer. Common examples of invitations to treat include shop windows, press advertisements, and auction notices. The offer arises where a customer is willing to purchase or agree, and the acceptance where the seller agrees.

TESTS FOR INVITATIONS TO TREAT (WITH CASE LAW)

The case of ***Storer v Manchester City Council [1974] 1 WLR 1403*** outlines that an offer is: ***"An expression of willingness to contract on specified terms with the intention that it is to be binding once accepted" Storer v Manchester City Council*** confirmed that in assessing whether these conditions have been met, the courts will take an objective approach. Therefore, the courts will consider how the conduct of the offeror would appear to an objective party, which requires an application of the ***'reasonable man'*** standard. Therefore, the question to ask is:
'On examination of the offeror's conduct as a whole, would the reasonable person consider the offeror to have expressed a willingness to contract on specified terms with the intention that it is to be binding once accepted?'
This test means there is no consideration of the intentions of the offeror or their state of mind. Even if the offeror did not intend his conduct to amount to an offer at all, the courts may still find contractual intent based on this test. This is an interesting standard to apply, as most other civil laws apply a subjective test.
The courts have admitted that the 'reasonable man' standard is inherently difficult to apply, as it is always difficult to be completely impartial or reasonable. However, owing to the lack of a better alternative, the courts will apply the 'reasonable man' standard, if this standard did not apply, there would be a high amount of absurd rulings and decisions, as will become clearer on consideration of some of the rules of contract law.
It is also important to note that the offer must be communicated to the offeree (**Taylor v Laird (1856) 25 LJ Ex 329**)

The case of ***Gibson v Manchester City Council [1979] 1 WLR 294***, held the following words to be an invitation to treat:

"May be prepared to sell the house to you"

There was clearly no display of contractual intent, due to the words "may be prepared", which suggest the Council were open to negotiation, and therefore the statement was construed as an invitation to treat, rather than an offer. Applying the standard from ***Storer v Manchester City Council*** and the 'reasonable man' standard, would the reasonable man consider the words "may be prepared to sell the house to you" as being an unequivocal display of contractual intent?

Throughout the history of contract law, there have been various disputes over the distinction between an offer and an invitation to treat. Therefore, in order to provide consistency, there are a number of presumptions which are applied to certain types of conduct:

Presumption one - Display of goods

The case of ***Pharmaceutical Society of Great Britain v Boots Cash Chemists [1953] 1 QB 401*** confirms that a display of goods is considered to be an invitation to treat. The specific approach taken is as follows:

The display of goods in a shop/self-service shop are an invitation to treat, the customer makes the offer to the cashier by presenting the goods at the service desk, the cashier accepts the offer by scanning the goods and requesting payment

Reasons why a display of goods is an invitation to treat: There are a multitude of reasons for which the court construed the display of goods in this way. It is evident that there would be various issues with the display of goods constituting an offer. If a display of goods was an offer, the acceptance would occur when the customer removes the goods from the shelves. The type of problems that may occur are:

1) The shopkeeper has no choice whether or not to sell to somebody once they have removed an item from the shelves, preventing the shopkeeper's ability to choose their customers
2) The acceptance has occurred at the price specified for the goods, meaning there can be no negotiation between the buyer and seller. This is not particularly relevant in most shops

where negotiation is not possible, but it is still a relevant issue in some cases, and particularly if an item is mispriced

3) A customer couldn't choose to exchange the item for another once they have removed it from the shelf, or replace the item, as acceptance has already occurred. Otherwise, they would be in breach of contract

Presumption two - Display of goods in a shop window

The case of ***Fisher v Bell [1961] QB 394*** is the legal precedent that confirms the display of goods in a shop window is an invitation to treat. In this case, the defendant had a knife in the window of their shop with a price tag attached, which was held to be an invitation to treat.

Reasons why a display of goods in a shop window is an invitation to treat: This presumption is based upon the rules from the above case of ***Pharmaceutical Society v Boots Cash Chemists***, in that if it was considered an offer, the shopkeeper could not pick and choose his customers.

There is a further consideration for display of goods in a shop window; the shop may have a limited stock of the item, therefore if two individuals saw the 'offer' at the same time and there was only one available item, the shopkeeper would be in breach of contract to one of the individuals.

Presumption three - Advertisements

As a general rule, the case of ***Partridge v Crittenden [1968] 2 All ER 421*** rules that an advertisement is an invitation to treat. The primary reason for this is the **"multi-acceptance" principle.**

The multi-acceptance principle: If an advertisement is considered an offer, theoretically, an unlimited number of people could accept that offer, which causes obvious problems when the advertisement is for a limited amount of goods, as the seller would be in breach of contract to each individual whom they could not provide goods for.

This statement from Lord Herschell in the case of ***Grainger & Son v Gough [1896] AC 325 HL*** succinctly describes this issue:

"The transmission of such a price-list does not amount to an offer to supply an unlimited quantity of the wine described at the price named, so that as soon as an order is given there is a binding contract to supply that quantity. If it were so, the merchant might find himself involved in any number of contractual obligations to supply wine of a particular description which he would be quite unable to carry out, his stock of wine of that description being necessarily limited."

Theory behind the multi-acceptance principle: Following this consideration, it is obvious that an advertisement does not fulfil the requirement from ***Storer v Manchester City Council***, as there is clearly no unequivocal display of contractual intent; the reasonable person would recognise that the individual who placed the advertisement never intended to contract with everybody who responds to the advert.

Exceptions to advertisements as invitations to treat:

Advertisements from a manufacturer

There is a theoretical argument that suggests if an advertisement is from a manufacturer it may be construed as an offer. This viewpoint was suggested by **Lord Parker in Partridge v Crittenden,** where he stated that:

"***I think when one is dealing with advertisements and circulars, unless they indeed come from manufacturers, there is business sense in their being construed as invitations to treat and not offers for sale***"

As can be identified, the issue was only mentioned in passing, and there was no debate or discussion with the other judges. The issue has not been revisited by the courts, therefore, this is not an established legal precedent and should only be treated as a persuasive factor for the courts rather than a rule.

Unilateral contracts

Before the effect of a unilateral contract on an advertisement is considered, a clear definition of a unilateral contract is required.
A unilateral contract is formed where the offeror makes a promise in exchange for an act by any offeree. This is often considered to be a contract with the whole world, as theoretically, any offeree may accept the contract. Acceptance is made through the performance of the act specified in the offer, and the offeree need not communicate his intention to accept/perform. Here is a common example of a unilateral contract:

Party A puts a poster up in the street, offering a £100 reward to anybody who finds their lost dog. It is clear that the acceptor of the offer, party B, is any individual who finds the dog, with acceptance occurring on performance. The contract is considered to be 'unilateral' as there is only obligations for one of the parties; the offeror has the strict obligation to pay the £100 to anybody who finds the dog, but there is no second party who must search for the dog, they may choose to, but there is no obligation.

Advertisements negating the 'multi-acceptance' problem

The American case of ***Lefkowitz v Great Minneapolis Surplus Stores Inc(1957) 86 NW 2d 689***, although only persuasive on the English courts, is an excellent example of the negation of the 'multi-acceptance' problem posed by advertisements.

The advertisement stated 'Saturday 9AM sharp, 3 brand new fur coats worth $100, first come first served, £1 each'. Multi-acceptance is not an issue here, as it is clear that there are only 3 of the coats available, and only the first three people to arrive at the shop would be able to accept the offer. If the principle from ***Storer v Manchester City Council*** is applied, it is objectively clear that there is an intention to create legal relations with those first three people.

In effect, this example can be seen as a unilateral contract, with the performance required being the arrival at the store first.

Presumption four - Tenders

A tender is where an individual seeks specific goods or services and advertises their need for them. This is construed as an invitation to treat, and any response to the tender will be an offer. Here is an example of a tender:

"I am looking to purchase a new car for around £5,000"

There is clearly no contractual intent, as it is merely inviting an offer in response. Even if the price was specified as exactly £5,000, there is still no offer owing to the lack of contractual intent, the writer of the tender obviously intends to negotiate and consider his options.

Exceptions

Intention

If a person seeking a tender shows unequivocal intention to be bound, a tender can be construed as an offer.In the case of ***Harvela Investments v Royal Trust Co of Canada [1986] AC 207***, the defendants set out a tender for their sale of shares in a company. One of the details in the tender was that they would accept the highest offer. Again, it can be seen that this tender negates the issue of multi-acceptance, as the seller can only accept one bid, the highest one. Therefore, the highest bid was considered to be an acceptance of the offer.

Tenders with collateral offers

In ***Blackpool and Fylde Aero Club Ltd v Blackpool BC [1990] 1 WLR 1195*** the council stipulated it would consider all tenders submitted before a specific date. The claimants delivered their tender before the required date, but the post wasn't emptied by the defendant. As the defendant did not consider the claimant's tender, the defendant had breached the collateral contract to consider all tenders submitted before the required date.

Presumption five - Automated machines

Automated machines posed an interesting question for the court in ***Thornton v Shoe Lane Parking [1971] 2 QB 163***. The court ruled that the operation of an automatic machine is considered an offer. The reasoning behind this was mainly based on the inability of the machine to negotiate with the customer and they cannot reject a customer.An interesting debate can be had about exactly when acceptance occurs. It may be contended that the acceptance is made once an individual inserts the coins and chooses an option. Acceptance is not at the point of the insertion of coins because the customer can still choose to cancel and get their coins returned. However, if there is no coin return option, acceptance would likely be held to be on insertion of payment.

Presumption six - Auctions

Auction without reserve: Where an auction is "without reserve" (i.e there is no minimum priced bid required to win the auction) each bid is an offer, and when the auctioneer ends the bidding, this is the acceptance. Therefore, each bidder may revoke their offer at any time before the end of the bidding.The auctioneer could, in theory, refuse to accept the offer, however, in the case of auctions, there is a collateral contract, this is between the auctioneer and the highest bidder, which involves the obligation to accept the highest bidder, meaning any refusal of a highest bid would amount to a breach of contract (***Barry v Davies [2000] 1 WLR 1962***).

Damages for a breach of collateral contract: The court will consider the position the bidder would have been in if his bid was accepted. For example, if the auctioneer declined a highest bid of £10 for an item worth £100, the price difference between the bid and the market price of the item would be awarded - in this case, £90.

Auction with reserve: Where an auction is "with reserve", (i.e the owner of the goods has set a minimum price) the auctioneer is only obliged to accept any bids which are above the minimum price.

Advertisement of an auction: An advertisement of an auction is considered to be an invitation to treat, meaning an individual who intends to bid on items cannot bring an action against the auctioneer who does not auction the item. In the case of ***Harris v Nickerson(1872) LR 8 QB*** the claimant attempted to claim for travel expenses and the time spent travelling for the auction.

Presumption seven - Online Transactions

Online transactions operate on a similar basis to that of advertisements and displays of goods. They are considered to be an invitation to treat, as the customer has the freedom to pick and choose the items in their virtual 'basket' before actually committing to a purchase. The question of where acceptance occurs is a difficult one with online transactions. The three common points of acceptance are on acceptance of the terms & conditions, on payment, or on shipping of the goods. Usually, the terms & conditions of the purchase will stipulate exactly when the binding contract is formed. The most common position for online terms & conditions to take is where acceptance occurs on the shipping of the goods. This may seem difficult to reconcile.

The doctrine of invitation to treat is essential in contract law because it protects individuals and businesses from being legally bound by interest expressions. A contract can only be valid when a clear offer has been accepted. As confirmed in the case laws, courts always distinguish between invitations to treat and offers on the bases of intent and legal consequences.

Both offer and invitation to treat have confusing similarities, thus we shall discuss their differences in the table below.

OFFER	INVITATION TO TREAT
It is a definite promise or proposal made by a party (an offeror) to the other (the offeree) with the intention to be legally bound to the terms of the agreement	It merely involves the willingness by a party to negotiate or receive an offer from another party.

It is a clear and unambiguous statement or proposal showing definite terms to the contract and the willingness to be legally bound.	Invitation to treat shows no commitment to be legally bound.
Once accepted, a legally binding contract is formed and the terms must be adhered to even if it doesn't suit them.	Any party can choose to back out or reject the offer made if it doesn't suit them.
An offer needs elements such as Consideration and acceptance for there to be a contract formed.	The only element needed for there to be an offer is willingness to negotiate.
An offer clearly shows intention to be legally bound if accepted, by stating its terms therefore, the offeror doesn't have a right to call off the proposal once accepted.	The party inviting shows no readiness to be bound legally thus, it gives them the right to reject the offer made to them and even call off the invitation to treat.

The Relevance of Carlill v Carbolic Smoke Ball Co: Unilateral Contract Formation

Carlill v Carbolic Smoke Ball Company [1893] 1 QB 256 stands as one of the most significant and enduring cases in English contract law, establishing fundamental principles that continue to shape modern contractual jurisprudence. The case represents a watershed moment in the understanding of unilateral contracts, the distinction between offers and invitations to treat, and the nature of contractual acceptance through performance.

Background and Facts of Carlill

The Carbolic Smoke Ball Company advertised their product with a bold promise: £100 would be paid to anyone who contracted influenza after using their smoke ball according to instructions for two weeks. To demonstrate their confidence, they deposited £1,000 with their bankers as a guarantee of their sincerity. Mrs. Carlill purchased and used the smoke ball as directed but subsequently contracted influenza. When the company refused to pay the promised £100, she sued for breach of contract.

Valid Offer versus Invitation to Treat

The Court of Appeal's determination that the advertisement constituted a valid offer, rather than an invitation to treat, established crucial precedent for distinguishing between these concepts. The court identified several key factors that elevated the advertisement beyond a mere invitation to treat.

First, the specificity and precision of the terms demonstrated genuine contractual intention. Unlike vague promotional statements such as "satisfaction guaranteed," the Carbolic Smoke Ball Company's advertisement contained precise conditions: use for two weeks, follow instructions exactly, and receive £100 if influenza was contracted. This specificity indicated an intention to create legal relations rather than engage in mere commercial puffery.

Second, the deposit of £1,000 with bankers provided tangible evidence of the company's serious intent. Lord Justice Lindley emphasized that this deposit demonstrated the company's readiness to pay and distinguished the advertisement from typical marketing hyperbole. This principle has been consistently applied in subsequent cases, including ***Williams v Carwardine [1833] 5 C & P 566***, where the court examined the genuineness of advertised rewards.

The court also established that advertisements can constitute offers when they are sufficiently certain and demonstrate clear intention to be bound. This principle contrasts with the general rule established in cases like ***Partridge v Crittenden [1968] 1 WLR 1204***, where advertisements are typically considered invitations to treat. However, Carlill carved out an important exception for unilateral contracts where performance itself constitutes acceptance.

The Unilateral Nature of the Contract

The unilateral character of the Carlill contract represents perhaps the case's most significant contribution to contract law. Unlike bilateral contracts where promises are exchanged, unilateral contracts involve a promise in exchange for performance. The company's advertisement constituted a promise that could only be accepted through complete performance of the specified conditions.

Lord Justice Bowen's judgment clearly articulated this principle, explaining that the offer was made to the world at large and could be accepted by anyone who performed the required conditions. The acceptance occurred not through communication but through Mrs. Carlill's complete performance of using the smoke ball as directed for two weeks while subsequently contracting influenza.

This unilateral structure addressed the practical impossibility of requiring prior communication of acceptance. As the court noted, it would be absurd to require every potential user to notify the company of their intention to accept the offer before commencing use of the product. The

performance itself constituted both acceptance and consideration, creating a complete contract upon fulfillment of the conditions.

The principle established in Carlill has been consistently applied in reward cases, including ***R v Clarke [1927] 40 CLR 227***, where the Australian High Court examined similar issues of unilateral contract formation through performance.

Modern Relevance and Applications

The Carlill decision remains highly relevant in contemporary contract law, particularly in the digital age where online advertisements and promotional offers proliferate. The case provides essential guidance for determining when promotional materials constitute binding offers rather than mere marketing statements.

Modern applications include loyalty programs, promotional competitions, and warranty promises. Courts continue to apply Carlill's principles when evaluating whether commercial advertisements create enforceable obligations. The case's emphasis on specificity, genuine intention, and tangible evidence of commitment remains the benchmark for distinguishing between offers and invitations to treat.

The unilateral contract principles established in Carlill also remain vital for understanding reward scenarios, insurance contracts, and performance-based agreements. The case's recognition that acceptance can occur through performance rather than communication continues to facilitate practical commercial arrangements where bilateral communication is impractical or impossible.

Furthermore, Carlill's influence extends to consumer protection law, where the case's emphasis on genuine commercial intention helps distinguish between enforceable promises and misleading advertising. The decision supports consumer rights by holding businesses accountable for specific promises made in their promotional materials, provided these promises meet the Carlill criteria for valid offers.

Carlill v Carbolic Smoke Ball Company remains a cornerstone of contract law, providing enduring principles that continue to shape contractual analysis over 130 years after the decision. The case's careful distinction between offers and invitations to treat, based on specificity, genuine intention, and tangible evidence of commitment, provides clear guidance for courts and practitioners alike.

The recognition of unilateral contracts as distinct contractual arrangements, where acceptance occurs through performance rather than communication, has proven invaluable in addressing the practical realities of commercial relationships. As commerce continues to evolve, particularly in

digital environments, the fundamental principles established in Carlill provide a robust framework for understanding when promotional statements create enforceable legal obligations.

The case's lasting relevance demonstrates the wisdom of the Court of Appeal's analysis and the universal applicability of its core principles to diverse contractual scenarios across different eras and commercial contexts.

REASONS FOR THE BLURRY LINES BETWEEN OFFER AND INVITATION TO TREAT

The line between an offer and an invitation to treat can be blurry because of the nuances in intention, language, and context. Here's a breakdown of the main reasons why this line is often not clear;

Ambiguity in Language Used
The words used in advertisements, notices, or negotiations are often vague or open to interpretation. For example, a statement like "I am willing to sell my car for ₦5 million" might sound like an offer, but it could just be a declaration of willingness to negotiate an invitation to treat.

Context of the Statement
The context in which a statement is made matters. In shops, catalogues, or online listings, goods with a price tag look like offers, but courts often treat them as invitations to treat.
Example: Pharmaceutical Society of Great Britain v Boots Cash Chemists displaying goods on shelves was held to be an invitation to treat, not an offer.

Commercial Practice and Policy
Courts often distinguish between offer and invitation based on commercial convenience. If every displayed good were an offer, sellers could be bound to sell to everyone, which would be impractical. Hence, policy reasons support treating shop displays and ads as invitations, not offers.

Misleading Advertisements or Tenders
Some ads seem specific and definite (e.g. "First come, first served"), which can mislead buyers into thinking an offer is being made. In ***Carlill v Carbolic Smoke Ball Co.***, the court treated an ad as a valid offer because it was specific and included a deposit of money to show seriousness.

Tendering Process
Calling for tenders is generally an invitation to treat, while the actual tender submitted is the offer. But if the request for tenders includes a promise to accept the highest/lowest bid, it might amount to a binding offer (see ***Harvela Investments Ltd v Royal Trust Co of Canada***)

CRITICISMS & GRAY AREAS OF INVITATION TO TREAT

Commercial Manipulation - Using Invitation to Treat to Escape Liability
Strategy: Businesses deliberately frame statements (e.g., ads, pricing) as "invitations to treat" so they aren't legally bound at that point letting them withdraw, add conditions, or refuse later.
Example: Argos website mispricing incident in 2013 because listings were treated as invitations to treat, Argos didn't have to honor the mistaken low price. In E-commerce, dynamic pricing and automated listings rely on this doctrine to preserve flexibility

Consumer Protection Concerns
Risk: Misleading wording such as bait-and-switch ads can deceive vulnerable consumers, leaving them without legal remedy if businesses claim it was only an invitation to treat.
Regulation: Many jurisdictions enforce clear-info rules; false/misleading invitations violate consumer protection laws like FTC rules in the US, and similar provisions elsewhere. Deceptive invitations undermine market trust and disproportionately harm non-expert consumers.

Contract Fairness
Unconscionability: Contracts formed via manipulative invitations may be voided if terms are overly one-sided or hidden in fine print.
Unfair Clauses: Under acts like UCTA 1977, businesses cannot rely on exclusion clauses tucked into invitations after a customer has committed.
Consumer Law: Many legal systems (e.g., South Africa's CPA) require conspicuous disclosure and ban unfair practices, giving clients rights against oppressive or deceptive contractual terms.

Judicial Inconsistencies

1**. Discretionary Interpretation**

Courts often interpret cases based on the specific language and context, leading to inconsistent outcomes. What one court sees as a mere invitation, another might treat as a binding offer, especially in advertisements and tender cases.

2. Fine Distinctions Lead to Unpredictability

Tiny wording differences (e.g., "may be prepared to sell" vs "I will sell") can change legal outcomes, making case law unpredictable.

This makes it difficult for businesses and consumers to know their rights without legal advice.

Justification for the Distinction

1**. Practicality in Commerce**

Treating displays and ads as invitations to treat prevents chaos; sellers can run out of stock or reject certain buyers. If every display were an offer, sellers would be bound to every customer, which isn't feasible.

2**. Protection for Sellers**

It gives sellers the right to refuse sales (e.g., due to age restrictions, legal limits, or errors like mispricing).

3. Maintains Freedom of Contract

Prevents involuntary contracts; parties are only bound when clear acceptance of a specific offer occurs.

4. Encourages Negotiation

Allows space for bargaining, counter-offers, and flexibility in commercial relationships.

CONCLUSION

In sum, the distinction between an **offer** and an **invitation to treat** lies at the very heart of contractual certainty and enforceability. While an offer reflects a definite willingness to be bound upon acceptance, an invitation to treat merely opens the door to negotiation without immediate legal consequences. As shown through leading cases like ***Carlill v Carbolic Smoke Ball Co.***,

Partridge v Crittenden, and ***Pharmaceutical Society v Boots***, courts have consistently upheld this separation to protect both commercial freedom and contractual integrity.

Understanding this distinction does more than satisfy academic curiosity, it determines when a legal obligation arises, who bears liability, and how businesses and consumers navigate daily transactions. Mistaking an invitation to treat an offer could lead to premature enforcement of contracts, unfair obligations, or legal disputes.

Thus, the principle laid down by Bowen LJ remains timeless: **while an offer may echo across the world, only those who respond in the prescribed manner form the legal bond that contract law protects**. Recognizing where negotiation ends and obligation begins is not just doctrinal, it is essential to justice in commerce.

References:

1. Treitel, G.H. The Law of Contract (Sweet & Maxwell, 14th ed, 2015)
2. McKendrick, E. Contract Law: Text, Cases and Materials (Oxford University Press, 8th ed, 2018)